DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH Petitioner, v. ARROW TRUCKING CO. Respondent	Case Nos.: I-02-12041 I-02-12283

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 20 Chapter 9 of the District of Columbia Municipal Regulations ("DCMR"). By Notice of Infraction (No. 12041) served June 25, 2002, the Government charged Respondent Arrow Trucking Co. with a violation of 20 DCMR 900.1 which prohibits, with certain exceptions not applicable here, motor vehicles from idling their engines for more than three minutes while parked, stopped or standing. The Notice of Infraction charged that Respondent violated 20 DCMR 900.1 on June 14, 2002 while its truck was parked in the 1400 block of Okie Street, N.E., and sought a fine of $500.

Respondent failed to answer the Notice of Infraction within the allotted twenty days (15 days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on August 1, 2002, this administrative court issued an order finding Respondent in default and subject to a statutory penalty of $500 in addition to the fine sought, and requiring the Government to serve a second Notice of Infraction. D.C. Official Code

§§ 2-1801.04(a)(2)(A) and 2-1802.02(f). The Government served a second Notice of Infraction (No. 12283) on August 13, 2002.

On August 27, 2002, Respondent, through its General Counsel, filed an answer and plea of Admit pursuant to D.C. Official Code § 2-1802.02(b), along with a check (No. 089750) in the amount of $500. In the letter accompanying its answer, Respondent requested a suspension of the statutory penalty on the ground that its answer was delayed due to an internal investigation of the charged violation. Respondent represented that it has now sent messages to all its drivers "explaining the importance of this ordinance and to caution all drivers to observe the ordinance in Washington, DC."

By order dated September 3, 2002, I permitted the Government an opportunity to respond to Respondent's answer and request. In its response, the Government noted that, in light of Respondent's admission of liability and the immediate action taken to inform its drivers of the requirements of 20 DCMR 900.1, the Government would not oppose a suspension of the statutory penalty. Based on the entire record, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

By its answer and plea of Admit, Respondent has admitted it violated 20 DCMR 900.1 on June 14, 2002 as charged in the Notices of Infraction by idling the engine of its truck for more than three minutes while parked in the 1400 block of Okie Street, N.E. Respondent submitted its answer and payment in full of the $500 fine sought by check (No. 089750) on August 27, 2002. Respondent failed to timely respond to the first Notice of Infraction as a result of an internal

investigation of the charged violation. Respondent has taken immediate steps to apprise its drivers of the requirements of 20 DCMR 900.1.

III. Conclusions of Law

Respondent violated 20 DCMR 900.1 on June 14, 2002. A fine of $500 is authorized for a first violation of this regulation which Respondent has paid in full. 16 DCMR §§ 3201.1(b)(1) and 3224.3(aaa).

Respondent has also requested a suspension of the statutory penalty. While Respondent's efforts to remedy the underlying violation are laudable, the D.C. Council has mandated under the Civil Infractions Act that the failure to timely respond to a first Notice of Infraction without good cause subjects a respondent to a statutory penalty equal to the amount of the authorized fine. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). In this case, Respondent's explanation as to the delay in responding to the Notices of Infraction does not constitute good cause. Ordinarily, that failure would be fatal to Respondent's request. In light of the Government's unambiguous endorsement of, and consent to, a suspension of the statutory penalty, and the reasonableness of the articulated bases for its position under the totality of circumstances noted therein, however, I will not impose the statutory penalty in this case. *See Moore v. Jones*, 542 A.2d 1253, 1254 n.1 (D.C. 1988); D.C. Code § 2-1802.02(f); *DOH v. Town Terrace East*, OAH No. I-00-30247 at 4-5 (Final Order, July 8, 2002)

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this _____ day of _____, 2002:

ORDERED, that in light of Respondent's admission of liability and payment in full of the authorized fine for the violation charged in the captioned Notices of Infraction, and there being no other issues pending, the OAH Clerk's Office shall mark this matter as **CLOSED**.

/f/ 12/04/02

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Mark D. Poindexter
Administrative Judge